

1  
2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Sean Bennett,

10 Plaintiff,

11 v.

12 City of Phoenix, et al.,

13 Defendants.  
14

No. CV-23-02425-PHX-ROS (DMF)

**PROTECTIVE ORDER**

15 The parties have filed a Joint Motion for Entry of Stipulate Protective Order (Doc.  
16 34). Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and for good cause  
17 shown,

18 **IT IS ORDERED as follows:**

19 Nothing in this Protective Order shall be construed as affecting the Court's authority  
20 to unseal materials filed under seal if, upon reviewing the sealed documents even initially  
21 ordered sealed, the Court determines that the documents should be available to the public  
22 or otherwise do not merit sealed status under the governing procedural, statutory, and/or  
23 case law. Further, nothing in this Protective Order shall be construed as requiring the Court  
24 to conduct any hearing or proceeding in this matter under seal.

25 Per the parties' stipulation, **IT IS FURTHER ORDERED** subject to the above  
26 order(s) which shall govern when in conflict with below:

27 The following Definitions apply in this Order.

28 A. The term "**Confidential Information**" means information contained or

1 disclosed in any materials, including documents, portions of documents, answers to  
2 interrogatories, responses to requests for admissions, trial testimony, deposition testimony,  
3 and transcripts of trial testimony and depositions, including data, summaries, and  
4 compilations derived therefrom that is deemed to be Confidential Information by any party.

5 B. The term “**Materials**” includes, but is not limited to: documents;  
6 correspondence; memoranda; financial information; emails; specifications; marketing  
7 plans; marketing budgets; customer information; materials that identify customers or  
8 potential customers; price lists or schedules or other matter identifying pricing; minutes;  
9 letters; statements; cancelled checks; contracts; invoices; drafts; books of account;  
10 worksheets; forecasts; notes of conversations; desk diaries; appointment books; expense  
11 accounts; recordings; photographs; motion pictures; sketches; drawings; notes of  
12 discussions with third parties; other notes; business reports; instructions; disclosures; other  
13 writings; records of website development; and internet archives.

14 C. The term “**Counsel**” means all counsel of record throughout the litigation,  
15 including outside counsel of record, and other attorneys, paralegals, secretaries, and  
16 support staff employed in the office of any counsel of record.

17 The following provisions apply in this litigation:

18 1. Each party to this litigation that produces or discloses any Materials, answers  
19 to interrogatories, responses to requests for admission, trial testimony, deposition  
20 testimony, and/or transcripts of trial testimony and depositions that the producing party  
21 believes should be subject to this Protective Order may designate the same as  
22 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY.”

23 (a) Designation as “CONFIDENTIAL”: Any party may designate  
24 information as “CONFIDENTIAL” only if, in the good faith belief of such party  
25 and its Counsel, the unrestricted disclosure of such information could be harmful to  
26 the business or operations of such party.

27 (b) Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any  
28 party may designate information as “CONFIDENTIAL – FOR COUNSEL ONLY”

1           only if, in the good faith belief of such party and its Counsel, the information is  
2           among that considered to be most sensitive by the party, including but not limited  
3           to trade secret or other confidential data related to research, development, finances,  
4           or customers.

5           2.       In the event the producing party elects to produce Materials for inspection,  
6           no marking need be made by the producing party in advance of the initial inspection. For  
7           purposes of the initial inspection, all Materials produced will be considered as  
8           “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to  
9           the terms of this Order. Thereafter, upon selection of specified Materials for copying by  
10          the inspecting party, the producing party must, within a reasonable time prior to producing  
11          those Materials to the inspecting party, mark the copies of those Materials that contain  
12          Confidential Information with the appropriate confidentiality marking.

13          3.       Whenever a deposition taken on behalf of any party involves the disclosure  
14          of Confidential Information of any party:

15               (a)    The deposition or portions of the deposition must be designated as  
16               containing Confidential Information subject to the provisions of this Order. Such  
17               designation must be made on the record whenever possible, but a party may  
18               designate portions of depositions as containing Confidential Information after  
19               transcription of the proceedings. A party will have until thirty (30) days after receipt  
20               of the deposition transcript to inform the other party or parties to the action of the  
21               portions of the transcript to be designated “CONFIDENTIAL” or  
22               “CONFIDENTIAL – FOR COUNSEL ONLY.”

23               (b)    Prior to the disclosure of Confidential Information, the disclosing  
24               party will have the right to exclude from attendance at the deposition any person  
25               other than the deponent, Counsel (including their staff and associates), the court  
26               reporter, and the person(s) agreed upon pursuant to paragraph 8, below.

27               (c)    The originals of the deposition transcripts and all copies of the  
28               deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR

1 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately  
2 presented to a court for filing must not be filed unless it can be accomplished under  
3 seal, identified as being subject to this Order, and protected from being opened  
4 except by order of this Court.

5 4. All Confidential Information designated as “CONFIDENTIAL” or  
6 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving  
7 party to anyone other than those persons designated within this Order, must be handled in  
8 the manner set forth below, and must not be used for any purpose other than in connection  
9 with this litigation, unless and until such designation is removed either by agreement of the  
10 parties or by order of the Court.

11 5. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” may  
12 be viewed only by:

- 13 (a) Counsel (as defined in paragraph C, above) of the receiving party;
- 14 (b) Independent experts and stenographic and clerical employees  
15 associated with such experts. Prior to receiving any Confidential Information of the  
16 producing party, the expert must execute a copy of the “Agreement to Be Bound by  
17 Stipulated Protective Order,” attached hereto as Exhibit A. Counsel for the  
18 receiving party must retain executed copies of such exhibits;
- 19 (c) The Court and any Court staff and administrative personnel;
- 20 (d) Any court reporter employed in this litigation and acting in that  
21 capacity; and
- 22 (e) Any person indicated on the face of the document to be its author or  
23 co-author, or any person identified on the face of the document as one to whom a  
24 copy of such document was sent before its production in this action.

25 6. Information designated “CONFIDENTIAL” may be viewed only by the  
26 individuals listed in paragraph 5, above, and by the additional individuals listed below:

- 27 (a) Party principals or executives who are required to participate in policy  
28 decisions with reference to this action;

1 (b) Technical personnel of the parties with whom Counsel for the parties  
2 find it necessary to consult in preparation for trial of this action; and

3 (c) Stenographic and clerical employees associated with the individuals  
4 identified above.

5 7. All information that has been designated as “CONFIDENTIAL – FOR  
6 COUNSEL ONLY” by the producing or disclosing party, and any and all reproductions of  
7 that information, must be retained in the custody of the Counsel for the receiving party,  
8 except that independent experts authorized to view such information under the terms of  
9 this Order may retain custody of copies as necessary for their participation in this litigation,  
10 but only during the course of this litigation. The principals, employees or other agents of  
11 the parties who received information prior to and apart from this litigation that was  
12 subsequently disclosed in this litigation as being either “CONFIDENTIAL” or  
13 “CONFIDENTIAL – FOR COUNSEL ONLY” may also retain copies of that information  
14 as is necessary for use in their respective businesses.

15 8. Before any Materials produced in discovery, answers to interrogatories,  
16 responses to requests for admissions, deposition transcripts, or other documents which are  
17 designated as Confidential Information are filed with the Court for any purpose, the party  
18 seeking to file such material must seek permission of the Court to file the material under  
19 seal. **The parties must follow the procedural requirements of LRCiv 5.6.** Nothing in  
20 this order shall be construed as automatically permitting a party to file under seal. Every  
21 motion to seal, including stipulations pursuant to LRCiv 5.6(d), must identify the legal  
22 standard applicable to the document at issue and explain why the material sought to be  
23 sealed meets that standard. The party seeking leave of Court shall show “compelling  
24 reasons” (where the motion is more than tangentially related to the merits of the case) or  
25 “good cause” for filing under seal. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809  
26 F.3d 1092, 1101 (9th Cir. 2016). Furthermore, the mere fact the parties have designated  
27 certain materials or information as confidential pursuant to an agreement or stipulation  
28 does not establish that any legal standard for placing those materials or information under

1 seal has been met. *Id.* Where a party seeks to seal only certain portions of a given  
2 document, the unredacted version of the document, which should be lodged under seal  
3 pursuant to LRCiv 5.6(c), must include **highlighting** to indicate which portions of the  
4 document the party seeks to redact. Additionally, a party seeking to file under seal shall,  
5 within the applicable deadline, file a redacted, unsealed version of any motion, response or  
6 reply if the party is waiting for a ruling from the Court on filing an unredacted, sealed  
7 version of the same document. Further, no portion of the trial of the matter shall be  
8 conducted under seal.

9       9. Confidential Information and Materials designated “CONFIDENTIAL” or  
10 “CONFIDENTIAL – FOR COUNSEL ONLY” shall be used solely for the prosecution or  
11 defense of this action. A party that wishes to use Confidential Information and/or Materials  
12 designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” for a  
13 purpose other than the prosecution or defense of this action must request permission, in  
14 writing, from Counsel for the producing party. The receiving party’s request must identify  
15 the Confidential Information and/or Materials designated “CONFIDENTIAL” or  
16 “CONFIDENTIAL – FOR COUNSEL ONLY” that the receiving party wishes to use and  
17 must identify the purpose for using it. If the parties cannot resolve the question of whether  
18 the receiving party can use Confidential Information and/or Materials designated  
19 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other  
20 than the prosecution or defense of this action within fourteen (14) days of the producing  
21 party’s receipt of such a request, the receiving party may move the Court for a ruling on  
22 the receiving party’s request. In the event any party files a motion seeking to use  
23 Confidential Information and/or Materials designated “CONFIDENTIAL” or  
24 “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other than the prosecution or  
25 defense of this action, the Confidential Information and/or Materials designated  
26 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” shall be submitted  
27 to the Court, under seal, for an in-camera inspection. Any Confidential Information and/or  
28 Materials designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL

1 ONLY” at issue must be treated as Confidential Information, as designated by the  
2 producing party, until the Court has ruled on the motion or the matter has been otherwise  
3 resolved.

4 10. At any stage of these proceedings, any party may object to a designation of  
5 confidentiality. The party objecting to confidentiality must submit written objections and  
6 the grounds for the objections to Counsel for the producing party. If the dispute is not  
7 resolved consensually between the parties within fourteen (14) days of receipt of  
8 objections, the objecting party may move the Court for a ruling on the objection. In the  
9 event any party files a motion challenging the designation or redaction of information, the  
10 document shall be submitted to the Court, under seal, for an in-camera inspection. The  
11 Materials at issue must be treated as Confidential Information, as designated by the  
12 producing party, until the Court has ruled on the objection or the matter has been otherwise  
13 resolved.

14 11. At any stage of these proceedings, any party may request that it be permitted  
15 to disclose Materials designated as Confidential Information to individuals not permitted  
16 by this Order to view such Materials. The party must submit to Counsel for the producing  
17 party a written notice identifying the relevant Materials and the individuals to whom the  
18 party wishes to disclose the Materials. If the request is not resolved consensually between  
19 the parties within fourteen (14) days of receipt of such a request, the requesting party may  
20 move the Court for a ruling allowing such disclosure. In the event any party files a motion  
21 requesting such disclosure, the Materials shall be submitted to the Court, under seal, for an  
22 in-camera inspection. The Materials at issue must be treated as Confidential Information,  
23 as designated by the producing party, until the Court has ruled on the request.

24 12. All Confidential Information must be held in confidence by those inspecting  
25 or receiving it. To the extent the Confidential Information has not been disclosed prior to  
26 and apart from this litigation, it must be used only for purposes of this action. If the  
27 Confidential Information was exchanged between the parties prior to and apart from this  
28 litigation for purposes of conducting their respective businesses, the parties may continue



1 to use that otherwise Confidential Information for that purpose. The parties may not  
2 distribute the Confidential Information beyond those persons or entities that had received  
3 the Confidential Information prior to this litigation. In addition, counsel for each party,  
4 and each person receiving Confidential Information, must take reasonable precautions to  
5 prevent the unauthorized or inadvertent disclosure of such information. If Confidential  
6 Information is disclosed to any person other than a person authorized by this Order, the  
7 party responsible for the unauthorized disclosure must immediately bring all pertinent facts  
8 relating to the unauthorized disclosure to the attention of the other parties and, without  
9 prejudice to any rights and remedies of the other parties, make every effort to prevent  
10 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

11 13. No party will be responsible to another party for disclosure of Confidential  
12 Information under this Order if the information in question is not labeled or otherwise  
13 identified as such in accordance with this Order.

14 14. If a party, through inadvertence, produces any Confidential Information  
15 without labeling or marking or otherwise designating it as such in accordance with this  
16 Order, the producing party may give written notice to the receiving party that the Materials  
17 produced are deemed Confidential Information, and that the Materials produced should be  
18 treated as such in accordance with that designation under this Order. The receiving party  
19 must treat the Materials as confidential once the producing party so notifies the receiving  
20 party. If the receiving party has disclosed the Materials before receiving the designation,  
21 the receiving party must notify the producing party in writing of each such disclosure.  
22 Counsel for the parties will agree on a mutually acceptable manner of labeling or marking  
23 the inadvertently produced Materials as “CONFIDENTIAL” or “CONFIDENTIAL – FOR  
24 COUNSEL ONLY” – SUBJECT TO PROTECTIVE ORDER.

25 15. Nothing within this Order will prejudice the right of any party to object to  
26 the production of any discovery material on the grounds that the material is protected as  
27 privileged or as attorney work product.

28 16. Nothing in this Order will bar Counsel from rendering advice to their clients



1 with respect to this litigation and, in the course thereof, relying upon any information  
2 designated as Confidential Information, provided that the contents of the information must  
3 not be disclosed.

4 17. This Order will be without prejudice to the right of any party to oppose  
5 production of any information for lack of relevance or any other ground other than the mere  
6 presence of Confidential Information. The existence of this Order must not be used by  
7 either party as a basis for discovery that is otherwise improper under the Federal Rules of  
8 Civil Procedure.

9 18. Information designated Confidential pursuant to this Order also may be  
10 disclosed if: (a) the party or non-party making the designation consents to such disclosure;  
11 (b) the Court, after notice to all affected persons, allows such disclosure; or (c) the party to  
12 whom Confidential Information has been produced thereafter becomes obligated to  
13 disclose the information in response to a lawful subpoena, provided that the subpoenaed  
14 party gives prompt notice to Counsel for the party which made the designation, and permits  
15 Counsel for that party sufficient time to intervene and seek judicial protection from the  
16 enforcement of this subpoena and/or entry of an appropriate protective order in the action  
17 in which the subpoena was issued.

18 19. Nothing in this Confidentiality Order shall limit any producing party's use  
19 of its own documents or shall prevent any producing party from disclosing its own  
20 Confidential Information to any person. Such disclosures shall not affect any confidential  
21 designation made pursuant to the terms of this Order so long as the disclosure is made in a  
22 manner which is reasonably calculated to maintain the confidentiality of the information.  
23 Nothing in this Order shall prevent or otherwise restrict Counsel from rendering advice to  
24 their clients, and in the course thereof, relying on examination of stamped confidential  
25 information.

26 20. Within thirty (30) days of the final termination of this action, including any  
27 and all appeals, Counsel for each party must purge all Confidential Information from all  
28 machine-readable media on which it resides and must either (a) return all Confidential

1 Information to the party that produced the information, including any copies, excerpts, and  
2 summaries of that information, or (b) destroy it. With respect to paper copies, return or  
3 destruction of Confidential Information is at the option of the producing party.  
4 Notwithstanding the foregoing, Counsel for each party may retain all pleadings, briefs,  
5 memoranda, motions, and other documents filed with the Court that refer to or incorporate  
6 Confidential Information, and will continue to be bound by this Order with respect to all  
7 such retained information, after the conclusion of this litigation. Further, attorney work  
8 product Materials that contain Confidential Information need not be destroyed, but, if they  
9 are not destroyed, the person in possession of the attorney work product will continue to  
10 be bound by this Order with respect to all such retained information after the conclusion of  
11 this litigation.

12 21. The restrictions and obligations set forth within this Order do not apply to  
13 any information that: (a) the parties agree should not be designated Confidential  
14 Information; (b) the parties agree, or the Court rules, is already public knowledge; or (c)  
15 the parties agree, or the Court rules, has become public knowledge other than as a result of  
16 a violation of this Order.

17 22. Any party may designate as “CONFIDENTIAL” or “CONFIDENTIAL –  
18 FOR COUNSEL ONLY” any Materials that were produced during the course of this action  
19 without such designation before the effective date of this Order, as follows:

20 (a) Parties to this action may designate such Materials by sending written  
21 notice of such designation, accompanied by copies of the designated Materials  
22 bearing the appropriate legend of “CONFIDENTIAL” or “CONFIDENTIAL –  
23 FOR COUNSEL ONLY” to all other parties in possession or custody of such  
24 previously undesignated Materials. Any party receiving such notice and copies of  
25 designated Materials pursuant to this subparagraph shall return to the producing  
26 party all undesignated copies of such Materials in its custody or possession, or shall  
27 affix the appropriate legend to all copies of the designated Materials in its custody  
28 or possession.

1           (b) Upon notice of designation pursuant to this paragraph, parties shall  
2 also: (i) make no disclosure of such designated Materials or information contained  
3 therein except as allowed under this Order; and (ii) take reasonable steps to notify  
4 any persons known to have possession of such designated Materials or information  
5 of the effect of such designation under this Order.

6           (c) All such designations must be made within thirty (30) days of the date  
7 of this Order.

8       23. If a party contends that any document has been erroneously designated  
9 “Confidential” it shall nevertheless treat the document as confidential unless and until it  
10 either (a) obtains the Designating Party’s written permission to do otherwise, or (b) brings  
11 a Motion to Vacate Confidential Designation before this Court and obtains an order of this  
12 Court stating that the document or information is not confidential and shall not be given  
13 confidential treatment. Nothing in this Order shall constitute a waiver of any parties’ right  
14 to object to the designation of a particular document as confidential.

15       24. This Order may be modified by agreement of the parties, subject to approval  
16 by the Court.

17       25. Nothing in this Order shall prevent any party from seeking further or  
18 additional protection, or removing protection, for Confidential Information.

19       26. The Court may modify the terms and conditions of this Order for good cause,  
20 or in the interest of justice, or on its own order at any time in these proceedings.

21 After termination of this action, the provisions of this Order shall continue to be binding,  
22 except with respect to those documents and information that became a matter of public  
23 record. This Court retains and shall have continuing jurisdiction over the parties and  
24 recipients of Confidential Information and Materials designated as confidential for  
25 enforcement of the provisions of this Order following termination of this litigation.

Dated this 27th day of September, 2024.

- 12 -

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Sean Bennett,

Plaintiff,

v.

City of Phoenix, et al.,

Defendants.

No. CV-23-02425-PHX-ROS (DMF)

**ACKNOWLEDGMENT AND  
AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, declare and say that:

1. I am employed as \_\_\_\_\_ by

\_\_\_\_\_.

2. I have read the Stipulated Protective Order (the “Order”) entered in *Bennett v. City of Phoenix, et al.*, Case No. CV-23-02425-PHX-ROS (DMF) and have received a copy of the Order.

3. I promise that I will use any and all “Confidential” or “Confidential – For Counsel Only” information, as defined in the Order, given to me only in a manner authorized by the Order, and only to assist Counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such “Confidential” or “Confidential – For Counsel Only” information with anyone other than the persons described in paragraphs 3, 8 and 9 of the Order.

1           5.     I acknowledge that, by signing this agreement, I am subjecting myself to the  
2 jurisdiction of the United States District Court for the District of Arizona with respect to  
3 the enforcement of the Order.

4           6.     I understand that any disclosure or use of “Confidential” or “Confidential –  
5 For Counsel Only” information in any manner contrary to the provisions of the Protective  
6 Order may subject me to sanctions for contempt of court.

7           7.     I will return all “Confidential” or “Confidential – For Counsel Only”  
8 Materials (as defined in the Order) to the attorney who provided it to me, upon request of  
9 that attorney, and I shall not retain any copies of said Materials or any information  
10 contained within “Confidential” or “Confidential – For Counsel Only” Materials.

11           8.     I further agree to submit to the jurisdiction of the United States District Court  
12 for the District of Arizona solely for the purpose of enforcing the terms of the Stipulated  
13 Protective Order, even if such proceedings occur after this case is terminated.

14           I declare under penalty of perjury that the foregoing is true and correct.

15  
16                   Date: \_\_\_\_\_

17                   Signature: \_\_\_\_\_

18                   Printed Name: \_\_\_\_\_